

Chapter 15

Long-term asset funds

15.3 Constitution

Application

- 15.3.1 **R** This section applies to an *authorised fund manager* of a *long-term asset fund*.

Classes of unit

- 15.3.2 **R** A *long-term asset fund* may issue such *classes of unit* as are set out in the *instrument constituting the fund*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

Names of schemes, sub-funds, and classes of units

- 15.3.3 **R**
- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
 - (2) The *authorised fund manager* of a *long-term asset fund* must include the term 'long-term asset fund' or 'LTAF' in the name of the *scheme* and in relation to any *sub-fund* which is also a *long-term asset fund*.

Undesirable and misleading names

- 15.3.4 **G**
- (1) ■ COLL 6.9.6G (Undesirable and misleading names) contains *guidance* as to names which may be undesirable or misleading.
 - (2) The term 'Long-Term Asset Fund' or 'LTAF' is reserved for a *long-term asset fund* whose *authorised fund manager* operates, or proposes to operate, it in accordance with the *rules* in this chapter.
 - (3) Only *AIFs* that are authorised in accordance with the *LTIF Regulation* may use the designation 'LTIF' or 'long-term investment fund'.

Instrument constituting the fund

- 15.3.5 **R**
- (1) The statements and provisions required by ■ COLL 15.3.6R must be included in the *instrument constituting the fund* of a *long-term asset fund*.
 - (2) The *instrument constituting the fund* must not contain any provision that conflicts with any applicable *rule*.

Table: contents of the instrument constituting the fund

15.3.6

R This table belongs to ■ COLL 15.3.5R.**1 Description of the authorised fund**

Information detailing:

- (1) the name of the *authorised fund*;
- (2) that the *authorised fund* is a *long-term asset fund*;
- (3) in the case of an *ICVC*, whether the head office of the *company* is situated in England and Wales, Wales, Scotland or Northern Ireland.

2 Property Authorised Investment FundsFor a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the *scheme*; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the *scheme*, the *authorised fund manager* is entitled to delay any *redemption* or *cancellation* of *units* in accordance with 8 if the *authorised fund manager* reasonably considers such action to be:
 - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
 - (b) in the interests of the *unitholders* as a whole.

3 Constitution

The following statements:

- (1) the *scheme property* of the *scheme* is entrusted to a *depository* for safekeeping (subject to any exception permitted by the *rules*);
- (2) if relevant, the duration of the *scheme* is limited and, if so, for how long;
- (3) charges and expenses of the *scheme* may be taken out of *scheme property*;
- (4) for an *ICVC*:
 - (a) what the maximum and minimum sizes of the *scheme's* capital are; and
 - (b) the *unitholders* are not liable for the debts of the *company*;
- (5) for an *ICVC* which is an *umbrella*, a statement that the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
- (6) for a *co-ownership scheme* which is an *umbrella*, the property subject to a *sub-fund* is beneficially owned by the participants in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*;
- (7) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;

- (8) for an *AUT*:
- (a) the *trust deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if that *person* had been a party to it, and that the *unitholder* is bound by its provisions; and
 - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
 - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
 - (i) the *scheme property* (other than sums held to the credit of the *distribution account*) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply them in accordance with COLL 15.8.18R (Income);
 - (c) a *unitholder* is not liable to make any further payment after having paid the *price* of the *units* held, and that no further liability can be imposed on the *unitholder* in respect of those *units*; and
 - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*; and
- (9) for an *ACS*:
- (a) the *contractual scheme deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if that *person* had been a party to it, and that the *unitholder* is bound by its provisions;
 - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
 - (iv) states that *units* may not be *issued* to a *person* other than a *person*:
 - (A) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (B) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in COBS 4.12A (Promotion of restricted mass market investments);
 - (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone

- (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
- (vi) states that for a *co-ownership scheme*:
- (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
 - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the Act; and
 - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the FCA in exercise of its power under section 261X (Directions) of the Act;
- (vii) states:
- (A) whether the transfer of *units* in the ACS *scheme* or, for a *co-ownership scheme* which is an *umbrella (sub-funds of which pursue differing policies in relation to transfer of units)*, in each particular *sub-fund*, is either:
 - (i) prohibited; or
 - (ii) allowed;
 - (B) where a transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by FCA rules, including that *units* may not be transferred to a *person* other than a *person*:
 - (i) who is a:
 - (1) *professional ACS investor*; or
 - (2) *large ACS investor*; or
 - (3) *person* who already holds *units* in the *scheme*; and
 - (ii) to whom *units* in a *long-term asset fund* may be promoted without contravening the rules in COBS 4.12A (Promotion of restricted mass market investments); and
- (viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;
- (b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 2611 of the Act (Contractual scheme rules) and for the time being in force:
- (i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 15.8.18R (Income); and

- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after having paid the price of the *units* held, and that no further liability can be imposed on the *unitholder* in respect of those *units*;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
 - (i) acquire, manage and dispose of the *scheme property*; and
 - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

4 Investment objectives

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

5 Units in the scheme

A statement of:

- (1) the *classes* of *units* which the *scheme* may issue, indicating, for a *scheme* which is an *umbrella*, which *class* or *classes* may be issued in respect of each *sub-fund*; and
- (2) the rights attaching to *units* of each *class* (including any provisions for the expression in two denominations of such rights).

6 Limitation on issue of and redemption of units

(1) Details as to:

- (a) the provisions relating to any restrictions on the right to *redeem units* in any *class*; and
- (b) the circumstances in which the *issue* of the *units* of any particular *class* may be limited.

(2) A statement setting out the *dealing* frequency for *sales* and *redemptions* of *units* in the *scheme*, and the applicable *notice period* for *redemptions*.

(3) Where COLL 15.1.3R(4) (Long-term asset funds: eligible investors) applies, a statement that the *authorised fund manager* must take reasonable care to ensure that ownership of *units* in the *scheme* or a relevant *class* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor*.

7 Income and distribution

Details of the *person* responsible for the calculation, transfer, allocation and distribution of income for any *class* of *unit* in *issue* during the accounting period.

8 Redemption or cancellation of units on breach of law or rules

A statement that where any holding of *units* by a *unitholder* is (or is

reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be *redeemed* or *cancelled*.

9 Base currency

A statement of the *base currency* of the *scheme*.

10 Meetings

Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for *unitholders*.

11 Powers and duties of the authorised fund manager and depositary

Where relevant, details of any function to be undertaken by the *authorised fund manager* and *depositary* which the *rules* in *COLL* require to be stated in the *instrument constituting the fund*.

12 Termination and suspension

Details of:

- (1) the grounds under which the *authorised fund manager* may initiate a suspension of the *scheme* and any associated procedures; and
- (2) the methodology for determining the rights of *unitholders* to participate in the *scheme property* on winding up.

13 Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* will be to enable the holding of overseas immovables by the *scheme*.

14 Other relevant matters

Details of those matters which enable the *scheme*, *authorised fund manager* or *depositary* to obtain any privilege or power conferred by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the fund*.

Limited issue

15.3.7

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Units whose *issue* may be limited can only be *issued* if permitted by the *instrument constituting the fund*, under the conditions set out in the *prospectus* and provided that this will not materially prejudice any existing *unitholders* in the *scheme*.